

¹ 5 U.S.C. § 8101 *et seq.*

relationship to her federal employment on September 15, 2005 when she felt a sharp pain in her right hand while cutting bundles of mail. Appellant did not initially stop work. She instead performed limited-duty work without wage loss.

OWCP accepted appellant's claim for right radial styloid tenosynovitis, right enthesopathy of the right wrist/carpus, and reflex sympathetic dystrophy (complex regional pain syndrome) of the right upper extremity. Appellant stopped work on August 20, 2009 and received wage-loss compensation.

Appellant filed a claim for a schedule award (Form CA-7). By decision dated January 6, 2010, OWCP granted her a schedule award for 11 percent permanent impairment of her right upper extremity. The award was calculated under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).²

On April 21, 2014 appellant filed a claim for compensation (Form CA-7) seeking an increased schedule award due to her accepted work injuries. In support of her claim, she submitted a September 20, 2013 report from Dr. Robert S. Ferretti, a Board-certified orthopedic surgeon, who determined that appellant had 20 percent permanent impairment of her right upper extremity under the standards of the sixth edition of the A.M.A., *Guides*.

In an October 7, 2014 report, Dr. Aubrey A. Swartz, a Board-certified orthopedic surgeon serving as an OWCP referral physician, determined that appellant had two percent permanent impairment of her right upper extremity under the standards of the sixth edition of the A.M.A., *Guides*.

In a May 19, 2016 letter, mailed to appellant's address of record, OWCP informed appellant that there was a conflict in the medical opinion evidence regarding the extent of the permanent impairment of her right upper extremity. It referred appellant to Dr. Harry A. Khasigian, a Board-certified orthopedic surgeon serving as an impartial medical specialist to evaluate the permanent impairment of her right upper extremity. The appointment with Dr. Khasigian was scheduled for June 8, 2016 at 1:45 p.m., Pacific Standard Time (PST). OWCP advised appellant that, if she failed to provide an acceptable reason for not appearing for the examination or obstructed the examination, her benefits would be suspended in accordance with section 8123(d) of FECA.

In a June 8, 2016 report, Dr. Khasigian reported the findings of the physical examination he conducted on that date. He noted that his examination revealed no abnormality in appellant's right upper extremity, but indicated that, prior to making a final determination, he had ordered two diagnostic tests for appellant "which should resolve all questions regarding her situation." These included a cervical spine x-ray test to evaluate whether appellant had a cervical radiculopathy, and a triphasic bone scan of the right upper extremity to evaluate whether she had complex regional pain syndrome. Dr. Khasigian noted that several attempts were made to schedule appellant for these diagnostic tests, but that she failed to return telephone calls made by the testing facility. He also noted that "at the current time it is our understanding that the tests have not been performed."

² A.M.A., *Guides* (6th ed. 2009).

In a September 7, 2017 letter, OWCP informed appellant that it proposed to suspend her wage-loss compensation and medical benefits due to her obstruction of a medical examination.³ It noted that Dr. Khasigian had advised that appellant had not followed through with his request to undergo two diagnostic tests. OWCP afforded appellant 14 days to submit evidence or argument challenging the proposed suspension action. It noted, “If good cause is not established, entitlement to compensation and medical benefits will be suspended in accordance with 5 U.S.C. § 8123(d) until you attend and fully cooperate with the examination.” Appellant failed to respond to OWCP’s September 7, 2017 letter within the afforded period.

By decision dated September 25, 2017, OWCP suspended appellant’s wage-loss compensation and medical benefits pursuant to 5 U.S.C. § 8123(d), effective September 25, 2017. It found that she had obstructed Dr. Khasigian’s examination as she had failed to provide good cause for not undergoing the two requested diagnostic tests. OWCP advised appellant that her compensation would be reinstated effective the date she fully complies with Dr. Khasigian’s request by undergoing the diagnostic tests.

On November 17, 2017 OWCP received a report of the cervical spine x-ray testing that appellant underwent on November 2, 2017. On December 20, 2017 it received a report of the triphasis bone scan of the right upper extremity that she underwent on December 1, 2017.

In a January 18, 2018 letter, appellant requested that OWCP remove the suspension of her entitlement to wage-loss compensation and medical benefits because she had undergone the two requested diagnostic tests.

By decision dated June 11, 2018, OWCP affirmed its September 25, 2017 decision with regard to the suspension of appellant’s wage-loss compensation and medical benefits, effective September 25, 2017. It further noted that it had modified its September 25, 2017 decision to reflect that appellant’s wage-loss compensation and medical benefits had been reinstated effective November 2, 2017, the date she underwent the cervical spine x-ray test.

LEGAL PRECEDENT

Section 8123(a) of FECA authorizes OWCP to require an employee, who claims disability as a result of federal employment, to undergo a physical examination as it deems necessary.⁴ The determination of the need for an examination, the type of examination, the choice of locale, and the choice of medical examiners are matters within the province and discretion of OWCP.⁵ OWCP’s regulations provide that a claimant must submit to an examination by a qualified physician as often and at such times and places as OWCP considers reasonably necessary.⁶ Section 8123(d) of FECA and OWCP regulations provide that, if an employee refuses to submit to or

³ OWCP noted that section 8123(d) of FECA provides that, if an employee refuses to submit to or obstructs a directed medical examination, his or her right to compensation is suspended until the refusal or obstruction stops.

⁴ 5 U.S.C. § 8123(a).

⁵ *L.B.*, Docket No. 17-1891 (issued December 11, 2018); *J.T.*, 59 ECAB 293 (2008).

⁶ 20 C.F.R. § 10.320.

obstructs a directed medical examination, his or her right to compensation is suspended until the refusal or obstruction stops.⁷ OWCP's procedures provide that, before OWCP may invoke these provisions, the employee is to be provided a period of 14 days within which to present in writing his or her reasons for the refusal or obstruction.⁸ If good cause for the refusal or obstruction is not established, entitlement to compensation is suspended in accordance with section 8123(d) of FECA.⁹

ANALYSIS

The Board finds that OWCP properly suspended appellant's wage-loss compensation and medical benefits, effective September 25, 2017.

In May 2016, OWCP referred appellant to Dr. Khasigian, a Board-certified orthopedic surgeon serving as an impartial medical specialist, for an appointment on June 8, 2016 to evaluate the permanent impairment of her right upper extremity. It advised appellant that, if she failed to provide an acceptable reason for not appearing for the examination or obstructed the examination, her benefits would be suspended in accordance with section 8123(d) of FECA.

Although appellant attended the appointment scheduled on June 8, 2016 and participated in the physical examination on that date, she did not fully cooperate with Dr. Khasigian's complete evaluation. Dr. Khasigian noted that his examination revealed no abnormality in appellant's right upper extremity, but indicated that, prior to making a final determination, he had ordered two diagnostic tests for appellant in order to resolve questions regarding her medical condition. He ordered a cervical spine x-ray test to evaluate whether appellant had a cervical radiculopathy and a triphasic bone scan of the right upper extremity to evaluate whether she had complex regional pain syndrome. Dr. Khasigian noted that several attempts were made to schedule appellant for these diagnostic tests, but that she failed to return telephone calls made by the testing facility.

The Board finds that appellant's failure to schedule and appear for the cervical spine x-ray test and the triphasic bone scan of the right upper extremity constituted an obstruction of Dr. Khasigian's evaluation. For the purpose of invoking the penalty provision of section 8123(d) of FECA, it is sufficient that appellant did not fully cooperate with Dr. Khasigian's evaluation.¹⁰ As noted above, section 8123(d) of FECA provides that, if an employee refuses to submit to or obstructs a directed medical examination, his or her right to compensation is suspended until the refusal or obstruction stops.¹¹ At the time OWCP issued its September 25, 2017 decision suspending compensation, appellant had not shown good cause for not undergoing the diagnostic tests or otherwise fully cooperated with Dr. Khasigian's evaluation.

⁷ 5 U.S.C. § 8123(a); *id.* at § 10.323; *D.K.*, Docket No. 18-0217 (issued June 27, 2018).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.13(d) (September 2010).

⁹ *Id.*

¹⁰ *See P.B.*, Docket No. 17-1426 (issued June 19, 2018) (obstruction found when the claimant attended an OWCP-directed examination, but failed to fully participate in testing).

¹¹ *See supra* note 8.

For these reasons, OWCP properly suspended appellant's wage-loss compensation and medical benefits, effective September 25, 2017.¹²

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP properly suspended appellant's wage-loss compensation and medical benefits, effective September 25, 2017, pursuant to 5 U.S.C. § 8123(d).

ORDER

IT IS HEREBY ORDERED THAT the June 11, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 8, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹² The Board further notes that OWCP properly reinstated appellant's compensation and medical benefits, effective November 2, 2017, the date that she made a good faith effort to cooperate by attending the first of the two requested diagnostic tests. *Id.*